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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 09.05.2025

+ **W.P.(C) 11727/2023**

M/S KJP AND ASSOCIATES

.....Petitioner

Through: Mr Santanu Kanungo, Mr Sanjay
Rohilla and Mr Sayantani, Advocates.

versus

DEPUTY. ASSTT. COMMISSIONER OF
INCOME TAX

.....Respondent

Through: Mr Siddhartha Sinha, senior standing
counsel.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition, *inter alia*, praying that the income tax demand raised in respect of Assessment Year [AY] 2007-08 be deleted after taking into account the tax deducted at source [TDS] certificate (in Form 16A) which was furnished by the petitioner. The petitioner further prays that the directions be issued to the respondent to pass an order granting refund of tax due, after adjusting the TDS which was deducted in respect of payments received or accrued during financial year [FY] 2006-07, along with up to date interest.

2. The petitioner is a registered partnership firm and had filed its return of income for AY 2007-08 declaring a total income of ₹2,21,43,820/-. The



said return was processed under Section 143(1) of the Income Tax Act, 1961 [the Act] and an intimation dated 18.03.2009 was issued, whereby the TDS which was covered in the TDS certificate issued by Freudenberg Nok Pvt. Ltd. (formerly known as Sigma Freudenberg NOK Pvt. Ltd.) was rejected. The details of the same, which were to be attached with the intimation issued under Section 143(1) of the Act, were furnished to the petitioner on 09.06.2016. Thereafter, the petitioner, filed an application under Section 154 of the Act on 22.06.2016, for rectification of the error on record inasmuch as the credit for the TDS by Sigma Freudenberg NOK Pvt. Ltd. had not been accounted for. The petitioner's request was not processed. Consequently, the petitioner sent a reminder dated 14.01.2018 requesting the Assessing Officer [AO] to pass an appropriate order. The petitioner did not receive any response to the said reminder as well.

3. Thereafter, on 10.01.2020, the AO issued a notice under Section 221(1) of the Act for recovery of the demand, which had arisen solely for the reason that the TDS certificate furnished by the petitioner had not been accounted for. The petitioner responded to the said notice by letters dated 14.02.2018 and 20.01.2020 and requested the AO to allow the credit for the TDS certificate. The record indicates that the AO sought verification of the deduction and deposit of TDS from the Sigma Freudenberg NOK Pvt. Ltd. – the entity that had deducted the TDS. Sigma Freudenberg NOK Pvt. Ltd. responded to the AO confirming that it had deducted TDS from payments made to the petitioner and had also deposited the same to the credit of the Government. We consider it apposite to set out the tabular statement set out



in the response of Sigma Freudenberg NOK Pvt. Ltd. and the same is reproduced below:

"PAN No. of Deductor	AAFCS0306K	Rent						Period	P.Y. 2006-07		
DETAILS OF PAYMENT, TAX DEDUCTION AND DEPOSIT OF TAX INTO CENTRAL GOVERNMENT ACCOUNT											
S. NO.	Amount paid/cr edited (Rs)	Date of Payment/Credit	TDS	Surcharge Rs.	Educational Cess	Total tax deposited Rs.	Rate at Which Deducted	Cheque/DD No.(if any)	BSR code of Bank Branch	Date on which tax deposited	Transfer voucher/Challan
1	533164	01/07/2006	1066.3	1066.3	2346	119642	22.44%	164654&164646&164647	240720	07/06/2006	22 & 21 & 39
2	133291	01/08/2006	2665.8	2665.8	586	29911	22.44%	222810&222879898&79898	6390057	07/09/2006	44
3	133291	01/09/2006	2665.8	2665.8	586	29911	22.44%	798988&798988	6390057	09/10/2006	5 & 11
4	133291	01/10/2006	2665.8	2665.8	586	29911	22.44%	619933&61993	6390057	07/11/2006	35 & 36
5	133291	01/11/2006	2665.8	2665.8	586	29911	22.44%	623471&62347,634928&6349	6390057	07/12/2006	13 & 14
6	133291	01/12/2006	2665.8	2665.8	586	29911	22.44%	634928&634929&206801-03	6390057 &240720	08/01/2007	15 & 26
7	5325369	27/12/2006	1065074	106507	23431	1195012	22.44%	634928&634929&206801-03	6390057 &0240720	08/01/2007	15 & 26
8	894058	01/01/2007	178812	17881	3934	200627	22.44%	328135&328137	240720	07/02/2007	82 & 84
9	894058	01/02/2007	178812	17881	3934	200627	22.44%	660092&66009	6390057	07/03/2007	48 & 50
10	894058	01/01/2007	178812	17881	3934	200627	22.44%	306621	240720	07/04/2007	69
	9207162	Total	1841432	184143	40511	2066087					
Certified that a sum of Rupees 2066087/- (Twenty lac sixty six thousand eighty seven only) has been deducted at source and paid to the credit of the central Govt. as per the details given above"											

4. It is apparent from the above that Sigma Freudenberg NOK Pvt. Ltd. had provided full details of the TDS of ₹20,66,087/-, which was deducted from the payments made to the petitioner during the FY 2006-07 and had further also given details of the deposits made to the account of the Central Government. Sigma Freudenberg NOK Pvt. Ltd. had not only indicated the



cheques by which the amounts were deposited in the account of the Government, but also the bank account and the branch in which the cheques were deposited and the date of the deposit.

5. Notwithstanding that all requisite details of the deposit of TDS had been furnished to the AO, the AO did not process the petitioner's request for according it the credit for the TDS. This is for the reason that the same was not verified from the data available on the portal. Apparently, the AO had sent a communication dated 22.08.2022 to the concerned Deputy Commissioner of Income Tax (TDS), Chandigarh enclosing therewith the copy of the TDS Certificates furnished by the petitioner and requesting that the same be verified in order to enable the AO to process the petitioner's application. The concerned authority had responded by a letter dated 30.01.2023 stating that the data on the TRACES Portal is available from FY 2007-08 and this data is not available for FY 2006-07. Further, the ITR information is also not readily available for the said period.

6. It is apparent from the above that although the AO had taken steps to process the petitioner's request, it could not complete the same for want of verification from its records. Although the records may not be available on the portal, we are unable to accept that the same cannot be verified. As noted above Sigma Freudenberg NOK Pvt. Ltd. has provided details of the cheques and the concerned bank account where the same were deposited to the credit of the Central Government. The same can be verified from the concerned banks. However, it does not appear that any such exercise has been initiated.



7. We may refer to the order on 05.09.2023 passed by the coordinate bench. The same is set out below:

“CM No.45814/2023

1. Allowed, subject to the petitioner filing legible copies of the annexures, at least three days before the next date of hearing.

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2. The grievance of the petitioner is that the refund payable to it concerning Assessment Year (AY) 2007-08 has been pending for the last decade and a half.

2.1 It appears that the petitioner had filed a return for the aforementioned AY claiming refund amounting to Rs.7,92,621/-.

3. The petitioner asserts, as noticed above, that the refund was wrongly withheld and a fictitious demand was raised amounting to Rs.16,23,450/-. 3.1 The petitioner also claims that an application dated 22.06.2016 under Section 154 of the Income Tax Act, 1961 [in short, “Act”] was filed, which is pending adjudication up until today.

4. It appears that the respondent/revenue has, however, thrown up its hands claiming that it cannot trace the relevant records. For this purpose, our attention has been drawn to an internal communication dated 30.01.2023, wherein it was noted that the data on the “TRACES Portal” was available commencing from the Financial Year (FY) 2007-08.

5. The tax at source (TDS) has been deducted by an entity going by the name Sigma Freudenberg NOK Pvt. Ltd. [hereafter referred to as “Sigma”].

5.1 If tax deducted at source by the said entity is taken into account, then, it appears that the amount claimed as refund would be payable to the petitioner.

6. We may note that the respondent/revenue had also written to Sigma on 21.07.2020. In this communication, it was indicated to



Sigma that the petitioner/assessee is claiming that Sigma had deducted TDS amounting to Rs.20,66,087/- concerning AY 2007-08. [See Annexure P7 of the case file].

7. We have, on record, Sigma's communication, which gives details of the cumulative TDS deducted from payments made to the petitioner. [See Annexure P8 of the case file].

8. According to us, if the respondent/revenue is unable to locate the record, then the information given in Annexure P-8 by Sigma should be worked on to reach a conclusive finding qua deduction of tax at source as claimed by the petitioner.

8.1 This exercise will be done by the respondent/revenue before the next date of hearing.

9. Issue notice.

9.1 Mr Shailendera Singh, learned senior standing counsel, accepts notice on behalf of the respondent/revenue.

10. Counter-affidavit will be filed before the next date of hearing, which will, *inter alia*, allude to the exercise conducted by the respondent/revenue in ascertaining whether or not, as claimed by Sigma, tax at source amounting to Rs.20,66,087/- was deducted.

11. List the matter on 22.11.2023.”

8. In terms of the aforesaid order, in absence of the Revenue locating the record, the information as provided by Sigma Freudenberg NOK Pvt. Ltd. was required to be considered to reach a conclusive finding regarding deduction and deposit of TDS as claimed by the petitioner.

9. It is material to note that the AO has not controverted any of the facts as set out by Sigma Freudenberg NOK Pvt. Ltd. in its response to the verification sought by the AO. In the peculiar circumstances of this case, it would be necessary to accept the said communication as correct.



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10. In view of the above, we consider it apposite to dispose of the present petition directing the AO to consider the response furnished by Sigma Freudenberg NOK Pvt. Ltd. as correct, unless it determines otherwise, and process the petitioner's request on the aforesaid basis as expeditiously as possible and preferably within a period of eight weeks from date.

11. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 09, 2025
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Click here to check corrigendum, if any